

C O N F I D E N T I A L HARARE 000987

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR J. FRAZER, D. TEITELBAUM  
LONDON FOR C. GURNEY  
PARIS FOR C. NEARY  
NAIROBI FOR T. PFLAUMER

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SUBJECT: HIGH COURT DISMISSES PHASE ONE OF MDC PRESIDENTIAL ELECTION CHALLENGE

REF: 2003 HARARE 2204

Classified By: Political Officer Audu Besmer for reasons 1.5 b/d

**¶1.** (U) SUMMARY: On June 10, the High Court dismissed the first phase of the MDC's election petition covering challenges against the 2002 presidential election. No date has yet been set for a second phase, which is expected to disclose factual evidence potentially embarrassing to the GOZ. END SUMMARY.

**¶2.** (U) High Court Justice Ben Hlatshwayo dismissed the first phase of the MDC's presidential election petition, ruling that the constitutional and legal points the MDC raised did not prejudice the 2002 presidential election. The MDC had challenged the constitutionality of the Electoral Act and a 2002 amendment to the Act, which allowed President Mugabe to stipulate the composition of the Electoral Supervisory Commission (ESC), to restrict mail-in ballots to soldiers and diplomats, to extend voter registration for five extra days, and to allow voters who registered after the cutoff date to vote. The MDC also sought to include the ESC as a respondent; Hlatshwayo did rule in the MDC's favor on that point.

**¶3.** (SBU) The MDC originally filed this elections petition in April 2002. After 19 months, in November 2003 the MDC took a day and a half to argue its 27-point petition in court. The State's response took 40 minutes and did not cover many of the points the MDC had raised. Seven months later, Justice Hlatshwayo has dismissed most of the points the MDC raised. This paves the way for the second phase of the petition, an expectedly lengthy phase covering factual evidence and involving reportedly tens of witnesses. Justice Hlatshwayo has not yet issued reasons for his decision, and no date has been suggested to start the second phase.

**¶4.** (C) On June 10 MDC MP and Shadow Minister of Justice David Coltart said that he had been fundraising for the past two years to pay for this trial and that monies were more or less in place to pay legal fees for the lengthy second phase. Coltart could not predict when the second phase of the trial might start and noted that of 37 MDC challenges to the parliamentary elections of 2000, only 14 had so far been heard in court.

Comment:

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**¶5.** (C) Many observers construe this dismissal as a serious blow to the MDC, but the decision itself represents progress in the case, which has been delayed inexplicably for over two years. In addition, the first phase covering legal issues was less significant than the second covering factual ones. In the second phase the MDC intends to bring forward soldiers who stuffed ballot boxes, evidence of tampering with the voters' roll, and other dirty laundry the GOZ would not want aired in public. The incredible delays and expense, and judicial bias, however, in this and the parliamentary challenges have led some MDC leaders to question the wisdom of using the courts to achieve political ends.

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